93-243

Supreme Court, U.S.
FILED
JUN 15 1993
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1993

JOE L. JAMES and MAE NELL JAMES,

Petitioners,

v.

UNITED STATES
CITY OF LIVONIA, a municipal corporation, and GREAT ATLANTIC AND PACIFIC TEA COMPANY,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Petitioner having standing to sue in Federal Court when his Federal right is violated by the wrongful actions of police officers engaging in wrongful conduct, also the A&P Store employee when she made a false accusation against the Petitioner?

2. Whether the District Court had a right to dismiss Petitioner claim of factual allegation after he present all of his proof and evident that the police officer action and conduct were illegal and the tactic unethical and the police officers didn't use discretion when they approach the Petitioner by their wrong action of damages that cause the Petitioner to suffer injuries? And the wrongful action of the A&P Store employee when she made false

accusation against the Petitioner

3. Whether the Petitioner spouse have a right to sue because of loss of consortium?

4. Whether the Six Circuit Court was incorrectly when it stated that the Petitioner factual allegation couldn't challenge the district court decision incorrectly when it hand down an adverse ruling after the Petitioner presented all of his proof and evident that the Respondents were at fault?

PARTIES

JOE L. JAMES and MAE NELL JAMES,

Petitioners

-vs-

CITY OF LIVONIA, a municipal corp., and GREAT ATLANTIC AND PACIFIC TEA COMPANY,. a foreign corp., jointly and severally,
Respondents.
_____/

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I. OPINION BELOW

The decision of the United States Court of Appeal Six Circuit (App. p. 1a). The reason set forth in an opinion decision by the United States District Court Eastern District of Michigan Southern Division. It appear in the appendix to the Petitioner for Writ of Certiorari (App. p. 1a). The order denying rehearing dated March 24, 1993 (App. p. 1a).

II. JURISDICTION

The decision of the United States Court of Appeal was rendered and judgment enter on Feb. 1, 1993 (App. p. 43a).

III. CONSTITUTION AND STATUTORY PROVISION

§1983 civil action for deprivation of rights. Every person, who under color of any statute, ordinance, regulation, custom, or usage, of any

state or territory or the District of Columbia, subjects or causes to subjected any citizen of the United States or other person within the jurisdiction thereof the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law suit in equity, or other proper proceeding for redress for the purposes of this section. Any act of Congress applicable exclusively to the District of Columbia shall be considered to be a Statute of the District of Columbia (R.S. § 1979 Dec. 29, 1979 P.M. 96-170, § Stat. 1284) Bill of Right under the original 10th Amendment, Article 4, Search and Seizure.

IV. STATEMENT OF THE CASE

This case arrive out of a false accusation made against the Petitioner Joe L. James by the Respondent store

employee and an illegal search and seizure by police officers without probable cause and a wrongful arrest, police brutality on June 13, 1989. The treatment that the Petitioner received from the police officers violated Petitioner Joe L. James' constitutional rights. The Fourth Amendment protect against unconstitutional searches and seizure. There was not a probable cause because the Respondent store employee summon the police officer out for 2 female perpetrators, she change her story after the fact. Apparently while the police officers were searching an innocent person, the 2 female suspects were getting away. This were not a proper procedure by police officers. Discretion was not exercise. The police policy is that they didn't enforce the law. By their illegal conduct they did not follow the law and police policy.

They violated the Petitioner Joe L. James' constitutional right, the Bill of Right Law under the original 10th Amendment, Article 4 search and seizure. The right of the people to be secured in their person, houses, paper and effects against unreasonable search and seizure shall not be violated, and no warrant shall issue, but upon probable cause the Amendment's first clause say that only unreasonable search and seizure are forbidden. An arrest of seizure without probable cause at the time of the event is unconstitutional, U.S.C.A. Const. Amend. 4. Jaroslawicz v. Seedman, 528 727. And false accusation is unlawful and unconstitutional. The Petitioner Joe L. James and Mae Nell James were customer at the Respondent store located in the City of Livonia, County of Wayne, State of Michigan. Mae Nell James, the spouse of Joe L. James were in the store

purchasing a few item while the Petitioner Joe L. James, remain in the family vehicle as a passenger which was parked immediately outside the Respondent store when six to a dozen police officers from the City of Livonia and other city police officers surrounded Petitioner Joe L. James' car with gun drawn and weapon pointed at the Petitioner Joe L. James. There was no criminal activities occurring and the Petitioner Joe L. James did not meet the description that was given to the police officers. The officers were dispatch "knowly" summon out for 2 females suspects in another car donning stocking mask getting ready to arm rob the store. The store employee then accused Petitioner Joe L. James of this same crime. The policemen officer wrong conductful and the Respondent store employee false statement has been damaging to the Petitioner and cause him

to suffer from this abusive treatment, humiliation, embarrassment, public ridicule, loss of his good reputation, emotional distress, pain and suffering and mental damages from this negligent, reckless and harassment action caused by the Respondents, and Mae Nell James has suffer loss because of the aforesaid negligent and conduct of the Respondents in placing Petitioner Joe L. James under suspicious for illegal activity when the Respondent knowly knew there was no criminal activities going on. The Petitioner Joe L. James were sitting peaceful in his vehicle while his wife was conducting her shopping of a few item in the Respondent store. The Respondent store employee statement were defamatory and were made with ill will, malice and bad intent. See Yeldell v. Tutt, 913 F.2d 533 (1990). Because she had initial accused 2 females of this incident she

change her story after the fact and falsely accused the Petitioner Joe L. James illegal search and seizure by police officers without probable cause and a wrongful arrest policemen brutality on June 13, 1989. U.S.C.A. Const. Amend. 4, U.S. v. 806 F.2d 204 (1986).

V. **STATEMENT OF FACTS**

There were no criminal activities occurring and Petitioner Joe L. James were not the suspects when police officer approached Petitioner without probable cause he were search and seizure. The store employee summon them out for 2 females as the perpetrator getting ready to arm rob the store in an older car. Petitioner Joe L. James did not meet the description, neither did his car. The police officers didn't use discretion. It was not justifiable for them to apprehend the Petitioner Joe L. James. Obviously the suspects were apparently

getting away while they were apprehend an innocent person. They were request out by the store employee to apprehend 2 females. This is what they should have respond to instead they harassed the Petitioner Joe L. James. They didn't handle the situation proper. They were dispatch knowly out for 2 females. This was their assignment. The Petitioner Joe L. James were sitting peacefully in his vehicle while his wife shopped in the Respondent store. They didn't exercise discretion when they violate Petitioner Joe L. James' constitutional right, and illegal search and seizure without probable causes. They didn't carry out their function of government when they violated the Petitioner Joe L. James' constitutional rights and Const. Art. 1 § 6, U.S.C.A. Const. Amend. 4, White v. O'Leary 742 F Supp 990 (1990), U.S.C.A. Const. Amend. 4, Pella v. Adam 638 F.

Supp. 94 1986, Const. Amend. 4., U.S. v. Somers 950 F.2d 1279 (1991). The right of the people to be secured in their person houses, paper and effect against unreasonable search and seizure shall not be violated and no warrant shall issue but upon probable cause, and an arrest without probable cause at the time of the event is unconstitutional. U.S.C.A. Const. Amend. 4, Jaroslawicz v. Seedman 528 727. The record in this case however reveals that the Petitioner Joe L. James never left his vehicle while his wife were in the store shopping. The store employee initial accuse 2 black females as the perpetrator and after the fact she falsely accused Petitioner Joe L. James. Her story is inconsistence and fabrication. The police report was made of the 2 female suspects. The store employee only made one call to the Police Department.

The police officers were negligent. The Petitioner Joe L. James was not the alleged offender, the 2 female suspects were. The Petitioner Joe L. James shouldn't have been physically detained. He were not the 2 females suspect. Their responsibility should have been not to apprehend, detain, an innocent person, while the suspects were apparently getting away. The treatment the Petitioner Joe L. James received from the police officers were illegal and the tactics unethical. As a result of the store employee, Mrs. Parkinson, false accusation and defamatory statement, she cause the Petitioner Joe L. James to suffer injuries. The Petitioner Joe L. James to suffer from this abusive treatment by the store employee and the police officers humiliation, embarrassment, public ridicule, loss of his good reputation, emotional distress,

pain and suffering and mental damages from this negligent, reckless and harassment action caused by the Respondents. Mae Nell James, a spouse of Petitioner Joe L. James has suffer loss because of the aforesaid negligent and wrongful conduct of the Respondents in said case (App. p. 29a). Also in the Appendix is a conversation of Lt. McDonald, 7/25/89 on run sheet. Call came in A&P, 2 women, older car in parking lot, possibly donning stocking masks, 2 car officially responded, but could have been more unfounded.

The police officers and the Respondent store employee is responsible for all consequences growing out of their wrongful act. They are tort-feasor and should be liable for their wrongful action. In re Fricker, 113 B.R. 856 (1990). The store employee made defamatory statement against the

Petitioner Joe L. James and the Respondent should be liable for resultant injury. Catalfo v. Jensen, 628 F. Supp. 1453 (1986).

The injury to Petitioners occurred by the action of the Respondent wrong action. The Petitioner Joe L. James suffer from this abusive treatment, humiliation, embarrassment, public ridicule, loss of his good reputation, emotional distress, pain and suffering and mental damages from this negligent, reckless and harassment action cause by the Respondents and nightmares in placing Petitioner Joe L. James under suspicious for illegal activity when the Respondents knowly knew there was no criminal activities going on. The store employee initial summon policemen officers out for the two female suspect that were donning stock mask. This is what she reported.

VI. **REASON FOR ALLOWANCE OF THE WRIT**

The Court should review the decision of the Lower Court because after the Petitioner Joe L. James presented all his proof and evident providing the Respondent were at fault, the Lower Court dismiss Petitioner claim and rule in favor of the Respondents. The Court should review the decision of the Lower Court in order to resolve an important question of federal constitution laws which remain uncertain as a resolve of the decision of the Lower Courts when they dismiss Petitioner Joe L. James' claim and Mae Nell James', the spouse of Joe L. James, consortium claim. The Lower Court stated Petitioner couldn't challenge the Court with their factual allegation. The Petitioner showed that he personally suffered injuries as a result of the illegal and wrongful conduct of the police officers and the store employee and this injuries can be

trace to the Respondent. The Petitioner suffer abusive treatment, humiliation, embarrassment, public ridicules, loss of his good reputation, emotional distress, pain and suffering and mental damages from this negligent, reckless and harassment action cause by the Respondents.

A. **The Petitioner has right to sue in the Federal Court when their federal right are violated by wrongful action of police officers and false accusation made by the store employee, Mrs. Parkinson.**

1. Article III. Requirements

The United States Supreme Court has traditionally interpreted the Fourth Amendment's prohibition against unreasonable searches and seizure to mean that police officers could not search unless they have enough evident to arrest

the suspect and take him into custody. The Petitioner has reveal that he has suffer injuries as the result of the wrongful action and illegal conduct of the police officer. From this abusive treatment Petitioner has suffer humiliation, embarrassment, public ridicule, loss of his good reputation, emotional distress, pain and suffering and mental damages from this negligent, reckless and harassment action cause by the police officers and store employee. The Petitioner believe that this Court should make the Respondent liable for the injuries that they cause the Petitioner Joe L. James. The Lower Court have stated that the Petitioner cannot challenge the Court with their factual allegation by this. The Petitioner right has been diminished. The Petitioner Joe L. James feel he should have the same constitutional guarantees as all

citizens.

B. **The Petitioner feels by virtue of its status as a citizen he have constitutional rights.**

The Court of Appeal for the Six Circuit erroneously held that the Petitioner cannot challenge the courts with their factual allegation. The Petitioner believe because of the injuries incurred as a result of the Respondents' wrongful action by the violation of the Petitioner Joe L. James' constitutional rights the Court of Appeals asserts that the Petitioner Joe L. James cannot challenge the court with their factual allegation. The Court of Appeals asserts that Petitioner Joe L. James cannot challenge the courts with their factual allegation. Court reviewing magistrates determination of probable cause should reverse only where either statements of knowing or reckless

falsity were made meaning that warrant was invalid because of this.

b. The Petitioner, citizenship under the bill of rights states no one shall be deprived of the right to life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of laws. And these mistakes that was made against the Petitioner Joe L. James shouldn't have been excuse by the Court. The Sixth Circuit assert that the Petitioner couldn't challenge the Court with their factual allegation. It is well establish that Petitioner can challenge the Court with their factual allegation the Petitioner has standing. The Petitioner feel he have a right to exercise his First Amendment right and these right has been violated. The Petitioner feels the constitutional laws does not extend to

him when his claim was dismiss unfairly by the Lower Courts.

There was no remedy for the Petitioner Joe L. James. The basic policy underlying the law of negligence is to compensate the victim and to deter future negligence conduct. See Donaldson v. U.S. 634 F. Supp. 735. Magistrate's probable cause determination reflected improper analysis of totality of circumstances. U.S.C.A. Const. Amend 4. U.S. v. Flippen, 674 F. Supp. 536 affirmed 861 F.2d 266. The Respondent store employee made falsified statement against the Petitioner Joe L. James knowly that she had prior accused 2 females as the perpetrator and the police officers were dispatched out for 2 female suspects.

The police officers negligent and wrongful illegal search and seizure of the Petitioner Joe L. James while the

suspects were apparently getting away. The Petitioner has burden of establishing under totality of the circumstances that search and seizure violated his legitimate expectation of privacy in a particular place. The Respondent store employee accused Petitioner Joe L. James without justification because she had prior accused 2 females as the perpetrators. Great Atlantic Tea Company was negligence pursuant to 42 USC 2000. The Petitioner Joe L. James have shown negligent on part of the Respondent A&P. There was evident. found establishing negligence.

1. **Petitioner constitutional rights have been violated.**

The Sixth Circuit Court incorrectly held that the Petitioner Joe L. James cannot challenge the District Court with his factual allegation by citing that the Petitioner felt that his standing were

diminish. The Sixth Circuit Court also affirmed with the District Court. The Petitioner feels he have a right to sue when his constitutional rights have been violated. The District Court granted Summary Judgment and rule in favor of the Respondents and dismiss Petitioner Joe L. James' claim. The Fourth Amendment is intended to protect privacy of individual from invasion by unreasonable searches and seizure of the person and those places and things in which the individual has a reasonable expectation of privacy. U.S.C.A. Const. Amend 4. Pella v. Adams 638 F. Supp. 94 (1986), Fourth Amendment inquiry as to reasonableness of seizure takes into account only facts and circumstances known to government action at time of action. U.S.C.A. Const. Amend. 4. Rogriguez v. City of Passate 730 F. Supp. 1314, Affirmed 914 2d 244. Petitioner Joe L. James believe the Lower

Court should have upheld these Constitutional Laws that were violated against the Petitioners. Michigan Law recognize Petitioners' claim. Petitioner action against the Respondent has merit. Citizenship under the Bill of Rights states no one shall be deprived of the right to life. liberty of property without due process of law, nor deny to any person within it jurisdiction the equal protection of the laws. And this mistakes that was made against the Petitioner shouldn't have been excuse by the courts. The .Respondents should be made liable for the damage that they cause the Jameses. The Petitioner consumer right was violated while his wife were in the respondent store shopping while the Petitioner waiting in his vehicle for her on the Respondent premise. The Petitioner were made to feel segregated from other customer

because of the treatment he received. The others customer at the store was treated with preferential treatment. Plaintiff bringing defamation action must show that Defendant made false and defamatory statement concerning Plaintiff.

1. **Petitioner have standing by demonstrating that his federal rights was violated. The Lower Court apparently ignore the federal rights of the Petitioner and the Six Circuit Court citing in ruling that the Petitioner couldn't challenge the District Court with their factual allegation.**

(App. p 15a). See the ruling that was handed down by the Sixth Circuit Court. the Sixth Circuit Court justified the action of the Respondent by ignoring Petitioner factual allegation and ruling

in favor of the Respondent and citing that the Petitioner couldn't challenge the court with his factual allegation.

a. **Summary of argument. The sixth Circuit Court incorrectly held that the Petitioner couldn't challenge the court with his factual allegation.**

1. **The Petitioner have standing to sue because his federal right was violated. The Sixth Circuit incorrectly held that the Petitioner has no standing.**

For standing the Petitioner have demonstrated the injuries he sustained by the wrongful action of the Respondent and these injuries can be trace to the Respondents. The Constitutional and First Amendment right of the Petitioner has been violated by the Respondents. Therefore, the Petitioner establish

standing to sue in the Federal Court by demonstrating that his right has been violated by the action of the Respondents.

The Respondent store employee, Mrs. Parkinson, also fabricated her statement and stated the Petitioner were sitting in his car with a mask on. There is a different between a mask and bandage. A bandage is a strip of woven material in dressing and binding up wounds. The Petitioner Joe L. James had a bandage on his nose. Petitioner didn't have a mask. The store Respondent employee stories is inconsistence because she prior accuse 2 females of donning stocking masks getting ready to arm rob the store with ill will and malice and bad intent. She knowly falsely accused the Petitioner Joe L. James after the fact. See Yeldell v. Tuft, 913 F.2d 533 (1990). The Lower Courts erred when they ruled in favor of

the Respondent after Petitioner present his proof that the Respondent is at fault. Petitioner have shown a violated of Constitution rights. The Sixth Circuit place great emphasis that the Petitioner couldn't challenge the District Court with his factual allegation. The Lower Courts cannot deny the Petitioner his rights. It is for this reason that the Petitioner file within this Court for Writ of Certiorari to protect his constitutional right and to make the Respondent liable for the injuries that were cause to the Petitioner Joe L. James by the unfairly ruling of the Lower Court. The Petition feel the constitutional right laws does not extend to him, that his right is significantly diminished. By the wrongful action of the Respondent, the Petitioner were refer to see a psychology doctor for his nightmare. (App.

p. 36a).

It was order that this case be referred to mediation by Hon. Patrick J. Duggan. It was later adjourned until further order of the Court. (App. p. 34a). Police notes. (App. p. 29a). Notice of Status Conference. (App. p. 30a). Order granting Defendant City of Livonia Motion to Dismiss and/or for Summary Judgment. (App. p. 32a). "Order". (App. p. 34a). Doctor Evaluation. (App. p. 36a). Letter Release and Indemnity Agreement. (App. p. 37a). Stipulation and Order. App. p. 39a). Interrogatories. (App. p. 49a). Accident Closure Report. (App. p.52a). Order to Mediation Pursuant to Stipulation of Parties. (App. p. 54a). Defendant-Appellees' Response to Plaintiff Motion for Damages.

1. **The Six Circuit Court incorrectly held the Petitioner**

> **could not challenge the District Court decision in their ruling. The Six Circuit error held that Petitioners' factual allegation cannot challenge the District Court decision and the District Court unfairly dismiss Petitioner claim without probable causes after Petitioner Joe L. James present all his proof and evident that the Respondents were at fault.**

This was proven without a shadow of a doubt. The Petitioner injuries of suffer from this abusive treatment, humiliation, embarrassment, public ridicule, loss of his good reputation, emotional distress, pain and suffering and mental damages from this negligent, reckless and harassment action caused by the Respondents. This Court should overrule

the Low Court assertion that the Petitioner can't challenge the Court with his factual allegation. The Petitioner Joe L. James have standing to challenge the Court with his factual allegation that the Respondent is at fault.

The Petitioner standing to sue was diminished when the Sixth Circuit Court cited that the Petitioner factual allegation couldn't challenge the District Court decision. The question of unlawful search and seizure of evident by a police agency was first examined in a critical way by the Supreme Court in 1886 in Boyd v. United States, 116 U.S. 616. The Court noted that breaking down doors and rummaging through drawers was not the significant issue; rather it was the invasion of the indefeasible right of personal security, liberty and private property. Some years later, Weeks v. United States 232 U.S. 383 (1914) stated

very clearly that the Fourth Amendment prohibition against unreasonable search and seizure.

CONCLUSION

This case against the Respondent were brought under 42 U.S.C. 2000a by the former attorney. During the course of discovery there was evident found that the Respondents violated Petitioner Joe L. James' constitutional right and also violated his First Amendment rights and also they were negligent. It also was establish that the store employee with ill will and malice falsely accused Petitioner when she had prior accused 2 females as the perpetrators. The Federal statutes cited by Petitioner has applicability to retail stores such as the Respondent A&P, including damage to the consortium. Respondent permitted under 42 U.S.C. 2000a for

unconstitutional act, also for negligent conduct.

The Petitioner respectively requests this Honorable Court use its discretionary power and overrule the Lower Court after it was stated that the Petitioner factual allegation cannot challenge the Lower Court decision, and the Lower Court rule in favor of the Respondent and dismiss Petitioner claim unfairly after Petitioner present all his proof and evident.

The Court should grant Certiorari in order to resolve an important question of federal constitution law which remain uncertain as a result of Lower Court decision.

Respectfully submitted,

Joe L. James

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In Pro Se

July 28, 1993

APPENDIX 1

UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT

Appeal from the United Six Circuit Court of Appeal, Cincinnati, Ohio (Ohio Case No. 9201928).

City of Livonia Municipal Corporation
Kenneth Galica, Attorney for City of Livonia, Defendant-Appellees
Great Atlantic and Pacific Tea Company
John B. Farrell
Mrs. Maureen Parkinson
The Defendant-Appellees' Store Employee
Kenneth Galica with Police Officers for City of Livonia Municipal Corporation
Before: Kennedy and Guy, Circuit Judges and Brown, Senior Circuit Judge
United District Judge Patrick J. Duggan

The Defendant appeal an Order of the District Court granting Defendants' Motion for Summary Judgment

The Plaintiff-Appellants' claim was dismissed after they presented all evident and proof the Defendant-Appellees' were at fault.

Petitioner Joe L. James' constitutional and First Amendment right was violated.

The Court assert that Petitioner factual allegation couldn't challenge the District Court decision.

The Six Circuit affirmed the decision.

We exercise jurisdiction under 42 USC 2000a. Because of the negligent conduct of the Defendant-Appellees and the Petitioner First Amendment right, constitutional rights was violated and because of Petitioner federal right were violated, he feel that he have a standing.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH JAMES and
MAE JAMES,

Plaintiff,

CASE NO.:
91-CV-72781-DT

vs.

CITY OF LIVONIA, a municipal corporation and GREAT ATLANTIC AND PACIFIC TEA COMPANY, a foreign corporation, jointly and severally,

Defendants.
_____/

HON. PATRICK J. DUGGAN

OPINION

This matter is before the Court on defendant, City of Livonia's Motion to Dismiss and/or for Summary Judgment. Plaintiffs' complaint against defendant City of Livonia is a claim of "violation of civil rights" brought pursuant to 42 U.S.C. § 1983. Defendant, City of Livonia, has filed a Motion to Dismiss and/or for Summary Judgment asserting that it is entitled to the relief sought

on two grounds:

(1) That the alleged actions taken by the officers against plaintiff, Mr. James, do not rise to the level of constitutional violations for the purposes of § 1983 and;

(2) That plaintiffs have come forward with absolutely no evidence that Livonia had a policy or custom which gave rise to the officers allegedly constitutional actions toward Mr. James as required by Monell v. New York City Dep't of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

Defendants' second argument requires that the motion for summary judgment be granted. In Monell the Supreme Court held "that a local government may not be

sued under § 1983 for an injury inflicted solely by its employees or agents." Id., 436 U.S. at 694, 98 S.Ct. at 2037. Rather, the Monell Court held that such an entity could only be liable under § 1983 where the "execution of a government's policy or custom, whether made by its lawmakers or those whose edicts may fairly be said to represent official policy, inflicts the injury . . . . .." Id., 436 U.S. at 694, 98 S.Ct. at 2036-37. In other words, municipal liability may only attach where the municipality's policies are the "moving force [behind] the constitutional violation." Polk County v. Dodson, 454 U.S. 312, 326, 102 S.Ct. 445, 454, 70 L.Ed.2d 509 (1981).

In Coogan v. City of Wixom, 820 F.2d 170 (6th Cir. 1987), the Sixth Circuit adopted the Fifth Circuit's view of the burden to be satisfied by a plaintiff

when suing a municipality under § 1983, stating:

> If a city may be liable only where the injury is inflicted in the execution of city policy, the complainant must identify the policy, connect the policy to the city itself and show that the particular injury was incurred because of the execution of that policy. Plaintiff must, of course, prove that his injury was caused by city policy.

Id. at 176 (quoting Bennett v. City of Slidell 728 F.2d 762, 767 (5th Cir. 1984) (en banc), cert. denied, 472 U.S. 1016, 105 S.Ct. 3476, 87 L.Ed.2d 612 (1985)).

In its motion for summary judgment Livonia has informed this Court of the basis for its contention that summary judgment is appropriate on plaintiffs' § 1983 claim against it as required by Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). To wit, Livonia has stated that plaintiffs have come forward with no evidence to support any claim, if one is

to be inferred from their complaint that Livonia had a policy or custom which caused the allegedly unconstitutional conduct by the police officers. Plaintiffs have come forward with no evidence whatsoever indicating the existence of any policy or custom. The presence of such a policy is a necessary element for a § 1983 claim against a municipality under Monell and its progeny. See Polk County v. Dodson 454 U.S. at 326, 102 S.Ct. at 454.

Under such circumstances, summary judgment against plaintiffs on their claim against defendant Livonia is appropriate:

> [T]he plain language of Rule 56(c) mandates the entry of summary judgment, . . ., against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will have the burden of proof at trial. In such a situation, there can be no "genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's

case necessarily renders all other facts immaterial.

Celotex Corp., 477 U.S. at 322-23, 106 S. Ct. at 2552.

For the reasons set forth above this Court does hereby grant summary judgment in favor of defendant City of Livonia and plaintiffs' complaint against defendant City of Livonia shall be dismissed.

An order consistent with this Opinion shall issue forthwith.

DATED

PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies mailed this date to:
Kenneth G. Galica, Esq.
John B. Farrell, Esq.

No. 92-1928

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOE L. JAMES; MAE JAMES,	)	Filed Mar 24 1993
Plaintiffs-Appellants,	)	Leonard Green,
v.	)	Clerk
CITY OF LIVONIA, a municipal corporation; GREAT ATLANTIC AND PACIFIC TEA COMPANY,	)	ORDER
Defendants-Appellees	)	

BEFORE: KENNEDY and GUY, Circuit Judges, and BROWN, Senior Circuit Judge

These pro se appellants petition for a rehearing of this court's February 1, 1993, order affirming a district court order denying their motion filed pursuant to Fed. R. Civ. P. 60(b).

After careful consideration of the petition for rehearing, the panel concludes that it has not overlooked or misapprehended any point of law or fact in its order of February 1, 1993. Fed. R. App. P. 40(a).

Accordingly, it is ORDERED that the petition for rehearing be and hereby is denied.

ENTERED BY ORDER OF THE COURT

_____

Clerk

BACKGROUND

In June of 1989, 13th of June, the Jameses were customer at the A&P store located in Livonia, Michigan. The Petitioner Joe L. James remain in the family vehicles while his wife were conducting her shopping of a few item in the Respondent store 6 to a dozen policemen office approach Petitioner car with gun drawn, search him and his car. He were temporary under an arrest and falsely accused of getting ready to arm the store. It was discovery that police officer had been dispatch out to the store. The store clerk summon them out for 2 black female in an older car getting ready to arm rob the store. But the police officer apprehend the Petition Joe L. James while the suspect were apparently getting away. The respondent store employee initial accused 2 females as the perpetrator. After the fact she

change her story and accused the Petitioner Joe L. James. Petitioner filed a suit in the United State District Court. Mr. Stevens, attorney for the Petitioner, filed in the District Court under 42 U.S.C. 2000a. After all the proof and evident were present to the District Court that the Respondent were at fault, the A&P's Summary Judgment was granted and the City of Livonia policemen were granted Summary Judgment and the Judge rule in favor of the Respondents and dismiss Petitioner claim. The Petitioners then file in the United States Appeal Court for the Six Circuit and they affirmed with the District Court and the Petitioner were inform by the Order that was hand down that the James' factual allegations are not sufficient to challenge the District Court decision. The original attorney file this case under 42 U.S.C. 2000a. The Petitioner

feel his constitutional right have been violated, the Bill of Right law under the original 10th Amendment, Article 4, Search and Seizure, the right of the people to be secure in their person, houses, papers, and effects against unreasonable search and seizure, shall not be violated and no warrant shall issue, but upon probable cause. The first clause says that only unreason search and seizure are forbidden.

The store employee defamatory statement were damaging to the Petitioner. The Respondent store employee statement were defamatory and were made with ill will, malice and bad intent.

DISCUSSION

On appeal, the Sixth Circuit Court contends that Petitioner Joe L. James cannot challenge the District Court with his factual allegation. The Petitioner

have proven that the Respondent is at fault by proof and evident containing in the files, both documentary and testamentary, and the damages that was cause can be trace to the Respondent. The Petitioner Joe L. James suffer from the abusive treatment by the Respondent's humiliation, embarrassment, public ridicule, loss of his good reputation, emotional distress, pain and suffering, and mental damages from this negligent reckless and harassment action cause by the Respondents and Mae Nell James have suffer loss because of the aforesaid negligent and conduct of the Respondents in said case. The store employee make defamatory statement against the Petitioner Joe L. James. The Respondents should be liable for the resultant injure. Catalfo v. Jensen 628 F. Supp. 1453 (1986). Before the Petitioner Joe L. James invoke the jurisdiction of the

Federal Court he knows his requirement were to reveal he personally suffer as a result of the Respondent's abusive treatment.

I. **Standing**

Plaintiff have establish negligence on the part of the Respondents needed to maintain a claim base on 42 USC 2000a. This were establish in the District Court by the former Attorney, Plaintiff's claim against the Respondent were brought under 42 USC 2000a by the former attorney. That statute state in part: That the Petitioner were entitled to full and equal enjoyment of goods, services, facilities, privileges. The other customer at the store was treated with preferential treatment and the Petitioner Joe L. James was made to feel segregated from the other customer because of the treatment he receive from the Respondents while he was on the store premises while

his wife shopping for a few item in the Respondent store. In order to show a claim of violation of this statute, the Petitioner have showed the negligent and the wrongful action of the Respondents when she fabricated her statement and falsely accused the Petitioner after the fact when she initial accused 2 females as the perpetrators. She did this with ill will, malice, and bad intention. She knew it would be damaging to the Petitioner, Joe L. James. There were a police report made of the 2 females because this is whom she reported as the perpetrator. There was only one call made and it were about the 2 black females perpetrator. She fabricated her story and falsely accused the Petitioner, Joe L. James. The former attorney in the District Court brought an action under 42 USC 2000a of Respondent negligent and violation of Petitioner Joe L. James'

constitutional right. And also against the police officers for their neglect and violation of Plaintiff Joe L. James' constitution rights. The conclusion is inescapable. The Respondent is at fault and Petitioner have presented all the proof and evident to that fact. Evident is present to establish that the Respondent store employee were at fault by false and inconsistence statement. Accusing 2 females at the time of the event and accuse a male after the fact, her defamatory statement against the Petitioner Joe L. James was made with ill will, malice, and bad intention. By her action, she knowly knew she were damaging the Petitioner with her wrongful action and the police officer knowly knew who they were to apprehend 2 females donning stocking mask in an older car. Petitioner Joe L. James did not meet the description of the suspect, neither did

his car. The police officer did not take constitutional law in consideration. When they search and seizure of the Petitioner, Joe L. James without probable cause and arrest. This search and seizure without probable cause and a wrongful arrest policemen brutality, they should have been in hot pursuit of the suspect and their car. They were apparently getting away while they were harass an innocent person.

The Petitioner U.S.C.A. Constitutional Amendment 4 were violated when Petitioner and his vehicle were search without probable cause. U.S.C.A. Const. Amend. 4. U.S. v. Salazar, 805 F.2d 1394. The first aspect of Plaintiff's claim is that he was arrest and deprive of his liberty without due process of law. He was deprive of such right without authority of the law.

The Petitioner has proven without a

preponderance of the evident that the Respondent's store initial accusation were made of 2 black females as the perpetrator. There were a policemen report made and during the course of discovery, it were proven that the Respondent store employee made inconsistence statement when she accuse Petitioner Joe L. James after the fact. There are other proof and evident that she fabricated her statement. There was a conversation 7/25/89 from Lt. McDonald. On the run sheet he stated a call came in, A&P, two women, older car in parking lot possibly donning stocking mask. See Appendix. When policemen officer approach Petitioner, there was no criminal act occurring. U.S.C.A. Const. Amend. 4, U.S. v. Waton, 953 F2d 895. There was no reasonable basic to justifying this investigation stop the Petitioner did not meet the description.

Neither did his car and there was no criminal act occurring. The Petitioner were not the perpetrator, the 2 females were. Because of this, officers didn't have reasonable suspicion of criminal conduct on the Petitioner part. U.S.C.A. Const. Amend. 4., U.S. v. Somers, 950 F2d 1279 (1991).

As previously stated, the Constitution protect every citizen against unreasonable searches. Petitioner should not have been subject to this excessive force by the Respondent police officer without probable causes.

The essence of this tort by the policemen officers restraint of the Petitioner without probable cause the wrong act of the policemen officers was not justifiable. There was no justification for the arrest, and the search and seizure by the policeman officer. They also drew gun on the

Petitioner. All of this were without probable causes because there was no criminal act occurring, and the Petitioner was not the 2 female suspects. This is whom the store employee initial summon them to whom the perpetrator were. The Petitioner were not the perpetrator. The Petitioner were deprived of freedom of move for a sufficient period of time to constitute false imprisonment. She wrongful involved the Petitioner Joe L. James. He never left his vehicle while his wife were in the store shopping. D.C. Mich. 1974. Requirement of Plain View Doctrine that object observed must be immediately recognized as evidence incriminating accused is not that recognition of objects as evident be made beyond reasonable doubt, but only that recognition satisfies probable cause requirement. Comprehensive Drug Abuse Prevention and Control Act of 1970, §

40(9)(1) 21 U.S.C.A. § 841 (a)(1). U.S. v. Williams 385 Supp. 1400. The first aspect of Petitioner claim is that he was arrest, seizure and deprive of his liberty without due process of "law." To be deprived of one liberty without due process of law mean to be deprive of such right without authority of the law. Petitioner suffer damages as result of police officer's wrongful conduct. Seizure was not supported by reasonable suspicious because there was no criminal act occurring, and Petitioner didn't meet the description of the 2 females, neither did his car meet the description given the officers, and the arrest was not supported by probable cause. The Petitioner was not the perpetrators. The store employee summon the police officer initial for 2 female suspects getting ready to arm rob the store. She change her story after the fact.

A. The Petitioner believe that his standing to sue is with justification because Petitioner believe the Respondents should be likable for damages to the Petitioner Joe L. James because the Petitioner have proven documentary and testamentary that the Respondents is at fault. Under prevailing Supreme Court precedent, police officers must either have probable cause or exigent circumstances must exist before warrantless, forcible entry into private resident may be made for search or felony arrest purposes.Russo v. City of Cincinnati, 953 F.2d 1036 (1992). For Fourth Amendment seizure to occur, there must be acquisition of physical control. U.S.C.A. Const. Amend. 4 Id. The police didn't have probable cause to violate Petitioner private. There was no criminal act occurring and Petitioner were not the suspects.

2. The District Court found that the Petitioners were customer, his wife was shopping in the Respondent store, while Petitioner remain in the family vehicle on the store premise.

The Petitioner have standing, even though his claim was unfairly dismiss by the Lower Court. In Court reviewing magistrates searches and seizures, the policemen officers should have been in hot "pursuit" of the two black females when they were summon out. The Petitioner believe that the said courts should have based their ruling on the factual evident that was present by the Petitioner. The Respondent policemen officers did not make intelligent use of the information assign them. It would have been logic to rely upon the

information given them to whom to apprehend. The Petitioner were inform that he could not challenge the District Court with his factual allegation. This is in the Sixth Circuit Court of Appeal ruling that was handed down. Determination of probable cause should reverse only where either statement of knowledge or reckless falsity were made, magistrate abandoned his neutral and detached function or there is no substantial basic for determining existence of probable cause--meaning that warrant was invalid because magistrate's probable cause determination reflected improper analysis of totality of circumstances. U.S.C.A. Const. Amend. 4., U.S. v. Flippen 674 F. Supp. 536 affirmed 861 F.2d 266. M.D. Ala. 1988. Under Alabama Law, plaintiff may prevail on defamation claim only if evident establishes that defendant made

defamatory and false statement concerning plaintiff. Grimsley v. Guccione 703 F. Supp. 903. There was no doubt as to the person identity. There was no doubt in the mind of the police officers whom the suspects were the store employee gave them identification to who the suspects were. They were the 2 females. After the fact, she made defamatory and false statement against the Petitioner Joe L. James.

In order to constitute seizure, police officers must restrain person liberty by mean of physical force or show of authority. U.S.C.A. Const. Amend. 4, Weimer v. Schraeder, 952 F.2d 336 (1991).

The Petitioner Joe L. James' Fourth Amendment to the Constitution were violated requirement that libelous statement must leave no doubt as to person identity was met by fact concerning tow hat were occurring.

Cunningham v. United Nat. Bank of Washington, 710 F. Supp. 861. The Petitioner is not 2 females. He is a male.

On appeal, the Petitioner claim is that the Respondent violated Petitioner's First Amendment rights and constitutional right when Petitioner was falsely accused without probable cause by the store employee. Her false and defamatory statement cause the Petitioner damages. The police officers wrongful, negligent and illegal action of search and seizure without probable causes cause the Petition to suffer his right to private, to private was violated and his consumer right because his wife were in the Respondent store shopping. Petitioner have presented his proof and evident to that fact. The Respondent asserted that the Petitioner lack merit even though the petitioner have proof and evident that

the Respondent were negligent and violated Petitioner first Amendment and Constitution right. Petitioner exercise jurisdiction right under 42 U.S.C. 2000a because of the negligence of the Respondents with all the proof and evident present to the Lower Court dismiss Petitioner claim and rule in favor of the Respondent, stating Petitioner factual allegation. Petitioner could not challenge court with his factual allegation.

29a

James

Lt. McDonald - 421-2900, x 540

conversation 7/25/89

Run Sheet

Call came in A&P

2 women older car in parking lot

Possibly donning stocking masks

2 cars officially responded, but could have been more

Unfounded

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

JOSEPH JAMES, ET.AL

Plaintiff(s),

CIVIL ACTION NO: 91-CV-72781-DT

HONORABLE PATRICK J. DUGGAN

v.

CITY OF LIVONIA, ET.AL

Defendants),

_____/

NOTICE OF STATUS CONFERENCE

A Status Conference in the above matter has been scheduled for:

WEDNESDAY, JULY 24, 1991, at 2:30 p.m.

The purpose of this conference is to make the Court aware of the issues involved, to discuss the possibility of settlement, and to establish dates for discovery cut-off, motion cut-off,

pretrial and trial.

Please be prepared to address all these issues.

Marilyn Oren
Courtroom Deputy Clerk
231 W. Lafayette
Room 211
Detroit, Michigan 48226
(313) 226-3265

DATED: JUL 11 1991

Copies sent to:
David A. Stevens
Kenneth G. Galica
John B. Farrell

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

JOSEPH JAMES and

MAE JAMES, CASE NO: 91-CV-72781-DT

Plaintiff, HON. PATRICK J. DUGGAN

vs.

CITY OF LIVONIA, a municipal corporation and GREAT ATLANTIC AND PACIFIC TEA COMPANY, a foreign corporation, jointly and severally,

Defendants.

_____/

ORDER GRANTING DEFENDANT CITY OF LIVONIA'S MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT

At a session of said Court, held in the U.S. District Courthouse, City of Detroit, County of Wayne, State of Michigan on MAR 10 1992.

PRESENT: THE HONORABLE PATRICK J. DUGGAN

U.S. DISTRICT COURT JUDGE

This matter is before the Court on defendant City of Livonia's Motion to Dismiss and/or for Summary Judgment. For the reasons set forth in an Opinion issued this date,

IT IS ORDERED that defendant City of Livonia's Motion for Summary Judgment is hereby **GRANTED**, and plaintiff's Complaint against defendant City of Livonia is hereby **DISMISSED**.

PATRICK J. DUGGAN

UNITED STATES DISTRICT JUDGE

DATED: MAR 10 1992

Copies mailed this date

to the following parties:

David A. Stevens, Esq.

Kenneth G. Galica, Esq.

John B. Farrell, Esq.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

JOSEPH JAMES and

MAE JAMES, CASE NO: 91-CV-72781-DT

Plaintiff, HON. PATRICK J. DUGGAN

vs.

CITY OF LIVONIA, a municipal corp., and GREAT ATLANTIC AND PACIFIC TEA COMPANY, a foreign corporation,

Defendants.

_____/

ORDER

At a session of said Court, held in the U.S. District Courthouse, City of Detroit, County of Wayne, State of Michigan on MAY 1 1992.

PRESENT: THE HONORABLE PATRICK J. DUGGAN

U.S. DISTRICT COURT JUDGE

This matter is before the Court on

motion of defendant Great Atlantic and Pacific Tea Company seeking summary judgement. For the reasons set forth in an Opinion issued this date,

IT IS ORDERED that defendant Great Atlantic and Pacific Tea Company's Motion for Summary Judgement is hereby **GRANTED** and plaintiffs' complaint is hereby **DISMISSED.**

PATRICK J. DUGGAN

UNITED STATES DISTRICT JUDGE

DATED: MAY 1 1992

Pursuant to Rule 77(c),
Fed.R.Civ.P. copies
mailed this date to
the following parties:
David A. Stevens, Esq.
John B. Farrell, Esq.

Nathan Brooks, M.D.
Arthur Rose, M.D.
Emanuel Frisch, M.D.
Barry M. Moss, M.D.
Leon H. Morris, D.O.

Internal Medicine - Cardiology - Nuclear Medicine

29275 Northwestern Hwy.
Suite 200
Southfield, MI 48034
Tel. 355-3033

5/20/91

To Whom It May Concern,

Mr. Joe James was referred to a psychiatrist on April 2, 1991 for evaluation of nightmares related to an incident that happened away from work in June, 1989.

Mr. James says the symptoms do not interfere with his work.

Respectfully Yours,

Barry Moss M.D.

BM/bat

WELCH, MACALPINE, BAHORSKI,
BIRGLECKI & FARRELL, P.C.
ATTORNEYS AT LAW
71 NORTH AVENUE
MT. CLEMENS, MICHIGAN 48043-5543

Terry S. Welch
Robert F. MacAlpine
Timothy A. Bahorski, CPCU
Thomas R. Bieglecki
John B. Farrell

Thaddeus M. Dombrowski
Thomas J. Tomko

Telephone
(313) 469-1111
(313) 268-9000

Facsimile
(313) 469-1609

March 18, 1992

David A. Stevens, Esq.
Dadaou & Stevens, P.C.
27228 Michigan Avenue
Inkster, MI 48141

Re: James v City of Livonia and
Great Atlantic & Pacific Tea

Our file: 308-21-D-5805

Dear Mr. Stevens:

In accordance with settlement of the captioned matter, enclosed please find Release and Indemnity Agreement in the amount of $1,500,00, together with Stipulation and Order for Dismissal. Kindly have your clients execute the Release and Indemnity Agreement and return with the duly signed Stipulation.

We have, this date, ordered our client's settlement check and upon receipt of the above, will forward same, together with a true copy of the Stipulation and Order for Dismissal.

If you have any questions, please feel free to call.

Sincerely,

WELCH, MacALPINE, BAHORSKI,
BIEGLECKI & FARRELL, P.C.
John B. Farrell

Enc./pyw

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

JOSEPH JAMES and MAE JAMES,

Plaintiffs, Case No. 91CV72781DT

-vs- Hon. Patrick J. Duggan

CITY OF LIVONIA,

a municipal corp.,

and **GREAT ATLANTIC AND**

PACIFIC TEA COMPANY,

a foreign corporation,

Jointly and Severally,

Defendants

_____/

John B. Farrell (P 27627)

WELCH, MacALPINE, BAHORSKI,

BIEGLECKI & FARRELL, P.C.

71 North Avenue

Mt. Clemens, MI 48043

(313) 469-1111

Attorney for Great Atlantic
Pacific Tea Co.

David A. Stevens (P 25054)
Atty. for Plaintiffs

Kenneth Galica (P 27275)
Attorney for City of Livonia

_____/

STIPULATION AND ORDER

NOW COMES the parties, by and through their respective counsel, and hereby stipulates to an adjournment of the Mediation set for January 14, 1992, for the reason that additional discovery is necessary to complete this cause and Motions for Summary Disposition must be adjudicated prior to mediation being heard in this matter.

David A. Stevens (P 25054)
Atty. for Plaintiffs

Kenneth Galica (P 27275)
Atty. for City of Livonia

John B. Farrell (P 27627)
Atty. for Great Atlantic &
Pacific Tea Company

ORDER

At a session of said Court held in the courthouse on JAN 8 1992.

PRESENT: HON. PATRICK J. DUGGAN,
U. S. District Judge

This Court having been fully advised in the premises and having reviewed the

above Stipulation,

IT IS HEREBY ORDERED that the Mediation in this matter scheduled for January 14, 1992, be hereby adjourned until further order of this Court.

Hon. Patrick J. Duggan

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOE L. JAMES;

MAE JAMES,

Plaintiff-Appellants,

v.

CITY OF LIVONIA, a municipal corporation; GREAT ATLANTIC AND PACIFIC TEA COMPANY,

Defendant-Appellees.

_____/

O R D E R

FEB. 1, 1993

BEFORE: KENNEDY and GUY, Circuit Judges, and BROWN, Senior Circuit Judge

Joe and Mae James appeal a district court order denying their Fed. R. Civ. P. 60(b) motion for relief from the court's previous orders granting summary judgment for the defendants. The defendant company moves to dismiss the appeal and for an award of damages. This case has

been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

This claim was brought pursuant to 42 U.S.C. §§ 1983 and 2000a. The claim arises from an incident in which Joe James was sitting in a car parked in front of an A & P store. He was wearing a gauze bandage across his nose as a result of previous nasal surgery. The Livonia police searched him briefly, suspecting a planned robbery of the store. They did not arrest or otherwise detain him. He was searched because an A & P clerk in the store had called the Livonia police after two customers told her that someone was sitting in a car outside the store in a fire lane with the engine running. The customers reported that the person was wearing bandages or a mask on

his face.

The Jameses claim that the clerk called police because Joe James is black. Mae James filed a loss of consortium claim, derived from Joe James' § 200a claim. They requested damages.

The district court granted both defendants' motions for summary judgment. Defendant City of Livonia obtained summary judgment as the Jameses did not show that the city had a policy or custom which caused the allegedly unconstitutional police conduct. See Polk County v. Dodson, 454 U.S. 312 (1981). The court granted summary judgment in favor of defendant A & P as the store is not a "public accommodation" covered by 42 U.S.C. § 2000a and damages are not available under 42 U.S.C. § 200a. See United States v. Lansdowne Swim Club, 894 F.2d 83, 86 (3d Cir. 1990). The court also granted summary judgment

regarding Mae James' derivative loss of consortium claim. Cf. Taylor v. National Group of Cos., Inc., 729 F. Supp. 575, 578 (N.D. Ohio 1989).

The Jameses then filed their motion for relief from judgment, which was denied. They appealed. On appeal, the James repeat the same arguments they made in the district court.

In its motion to dismiss, the defendant company assumes the notice of appeal is taken from the judgment and is untimely. We construe the plaintiffs' notice of appeal to be taken from the denial of the plaintiffs' Red. R. Civ. P. 60(b) motion. The order denying this motion was entered on the district court's docket sheet on June 16, 1992. The notice of appeal is timely from the denial of this motion.

Concerning the merits, we conclude that the district court did not abuse its

discretion in denying the Rule 60(b) motion. See In re Salem Mortg. Co., 791 F.2d 456, 459 (6th Cir. 1986). The James' factual allegations are not sufficient to challenge the district court's decision concerning the legal issues in this case.

In its motion for damages, the defendant company argues that the appeal is frivolous, entitling the defendant to an award of damages under Fed. R. App. P. 38. The record in this case reveals that the plaintiffs have a good faith but mistaken belief that they were the victims of racial discrimination. Therefore, the motion for damages lacks merit.

Accordingly, the motions to dismiss and for damages are denied. The district court's order denying the Rule 60(b) motion is hereby affirmed. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Clerk

Issued as Mandate: 4-02-93

Costs: None

Filing Fee.....$

Printing.....$

Total.....$

A: I was up you know, like I said in the office doing my work. The gentlemen came in who who in the car, his wife was shopping, she was there also, he wanted to know who called the police, I told him I did, he wanted to know my name I gave it to him and he asked me why I called the police. I told him I says well you know I had two gentlemen come up to me with a complaint or not a complaint but just said that there's a man out there with a mask on and the cars running parked right out in front of the door.

Q: Uh ah.

A: He says well, the gentlemen, he he who came in he said well why didn't you go out there and check it out. I say's well what did you want me to do go out there and say to ya, are

you gonna rob me, I said I'm not gonna do that so I called the police.

Q: Uh ah.

A: And so from there I really don't remember what happened.

Q: So you never actually saw the claimant in the car?

A: No.

Q: You don't know if he was black, if he was white, what he said?

A: No, no.

Q: Okay, and uh, so you never saw what the face, they indicated that there is a mask on his face?

A: No.

Q: When he did come into the store, what did he have on his face?

A: It was a surgical nose thing, like he just from what he said he just got out of the hospital, he had I don't even know what kind of

surgery, something on his nose, but he also had a black hat on and it was pulled down.

Q: Okay, okay and was he black or white?

A: He was black, a black man.

Q: So that would have never had anything to do with cause you never saw him?

A: No, never saw him.

Q: Okay.

A: And like I said its, it was 10:00, 10:30 maybe even later but here I'm getting close to going home I have money up in that office, from girls bringing.

Q: Right.

A: So I'm gonna call the police.

Q: Sure, In June that time of the year it stays light longer, correct?

Accident Closure Report

Inc #1 LPD/89021544 (Pol.) Rel. #)

13-Jun-1989 22/56

Address 29585 5 Mile Apt) City) LI

Cross Street: A&P

Loc) LIE42322 E55 PAC)N Prm.) H

Caller name: UNKNOWN Number) - Com.) N

Call Type) SUSP Priority)

Comments) 2 B/F IN AN OLDER CAR OUTFRONT OF A&P DONING STOCKING MASKS

Units)

# of units assigned) Call taker)

Disp Pos)

First unit assigned) 22:56 Enroute):

At scene) : Unit Closed) :

Date/Time	Source	Status Change or Comments
13-JUN 1989 22:56	S CSW AX CO	Incident assigned by LPD0351 to:
13-JUN-1989	M IS	

23:00

13-JUN-1989 U CWS CL CO 9560 UNFOUNDED

23:02 PER

13-JUN-1989 S CWS CL CO Incident closed

23:02 LPD0351

Closed with class

code = 9560.

Incident closed

without report.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

JOSEPH JAMES, ET. AL — CIVIL ACTION NO.

Plaintiffs(s), 91-CV-72781-DT

- v - — HONORABLE PATRICK

CITY OF LIVONIA, — J. DUGGAN

ET. AL

Defendant(s).

_____/

ORDER FOR MEDIATION PURSUANT TO

STIPULATION OF PARTIES

At a session of said Court, held in the U.S. District Courthouse, City of Detroit, County of Wayne, State of Michigan on July 25, 1991.

PRESENT: THE HONORABLE PATRICK J. DUGGAN

U.S. District Court Judge

The parties having stipulated that this case be referred for mediation to the Wayne County Mediation Tribunal and

that the parties be bound by the provisions of Michigan Court Rule 2.403, now therefore,

IT IS ORDERED that this case be referred to Mediation pursuant to said Stipulation.

DATE: _____

_____

PATRICK J. DUGGAN

UNITED STATES DISTRICT JUDGE

TO: David A. Stevens

Kenneth G. Galica

John B. Farrell

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOE L. JAMES and MAE JAMES,
Plaintiff-Appellants,

-vs-

CITY OF LIVONIA, a municipal corporation, GREAT ATLANTIC AND PACIFIC TEA COMPANY,
Defendant-Appellees.

6th Circuit Court of Appeals No. 92-1928
Eastern District of MI No. 91 CV-72781 -DT
Hon. Patrick J. Duggan

_____/

John B. Farrell (P 27627)
WELCH, MacALPINE, BAHORSKI, BIEGLECKI & FARRELL, P.C.
71 North Avenue
Mt. Clemens, MI 48043
(313) 469-1111

Attorney for Great Atlantic

& Pacific Tea Co.

Joe L. James and Mae James

In Pro Per

_____/

DEFENDANT-APPELLEE'S RESPONSE TO PLAINTIFFS' MOTION FOR DAMAGES

Defendant-Appellee files this response to Plaintiff-Appellants' Motion for Damages pursuant to FRAP 27.

I. DEFENDANT REQUESTS THAT PLAINTIFFS' MOTION MORE SPECIFICALLY STATE THE RELIEF REQUESTED.

Plaintiffs' Motion for Damages presents a number of factual allegations. No law is cited in support of the motion. After review of this motion, defendant is at a loss to determine the relief requested by this motion. Plaintiffs' underlying Complaint, and this Appeal,

Statutory:

A DECLARATION OF UNITED STATE OF AMERICA STATUTE states we hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable right, that among these are life, liberty, a pursuit of happiness. A&P and Livonia violate my constitution right, Constitution of the United State of America, Article III, Sect. 2. The judicial power shall extend to all cases in law and equity arising under this constitution, the law under the United State and treaties made or which shall be under their authority to all cases affecting ambassador, other public ministers and consuls, to all cases of admiralty and maritime jurisdiction to controversies; to which the United State shall be a party; to controversies

between two or more states between a state and citizens of another state, between citizen of different states, between citizens of the same states claiming land under grants of different states, and between a state or the citizen. There are, and foreign states, citizen or subject. The statutory provision believe to confer on this court jurisdiction to view the judgment or decree in question by Writ of Certiorari.

"The Amendment to the Constitution", Artcile VI.

In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed which district shall have been previously ascertained by law and to be inform of the nature and cause of the accusation to be confronted with the witness against him, to have

compulsory process for obtaining witnesses in favor, and to have the assistance